

## Message Text

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SUBJECT: TRADEMARKS: SUNKIST PROBLEM

REF: FASTO 133, TOFAS 04

THIS MESSAGE ANSWERS SPECIFIC REQUEST FOR INFO IN FASTO 133 BUT IS FIRST FORMAL EMBASSY REPORT ON COMPLEX TRADEMARK PROBLEM ARISING FROM LACUNA IN KOREAN LAW WHICH COULD ADVERSELY EFFECT U.S. TRADEMARK OWNERS WHO ALLOW LICENSEES IN KOREA TO PRODUCE AND MARKET THEIR PROPRIETARY PRODUCTS. BEATRICE FOODS (MEADOWGOLD) AND FOREMOST DAIRIES WILL BE PROBLEMS IN FUTURE AND LARGE NUMBER OF PHARMACEUTICAL MARKS COULD BE QUESTIONED.

1. IN RESPONSE TO SUNKIST QUESTIONS, IT IS CLEAR FROM PUBLIC ANNOUNCEMENTS AND FROM OBSERVATION OF DISCUSSIONS BETWEEN ROKG OFFICIALS AND OTHER U.S. FIRMS INTERESTED IN LICENSING TRADEMARKS IN KOREA (LEVI STRAUSS IS MOST RECENT INSTANCE) THAT THE ROKG IS NOT ENCOURAGING USE OF FOREIGN TRADEMARKS ON CONSUMER GOODS. BASIC REASON IS TO REDUCE BALANCE-OF-PAYMENTS IMPACT OF ROYALTY PAYMENTS AND PROTECT EXISTING PRODUCERS. POTENTIAL LICENSORS HAVE BEEN COURTEOUSLY INFORMED THAT EQUITY INVESTMENT AND LIMITED OFFICIAL USE  
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EXPORT COMMITMENTS WOULD BE QUID-PRO-QUO FOR APPROVAL OF TECHNOLOGY AND TRADEMARK LICENSING APPLICATIONS. THIS FURTHER CONFIRMED IN DIRECT CONVERSATION WITH ECONOMIC PLANNING BOARD FUNCTIONARY RESPONSIBLE FOR FOREIGN

LICENSING CONTRACTS. HE REITERATED THAT BOTH HAI TAI/SUNKIST APPLICATIONS, ONE FOR TECHNOLOGY TRANSFER AND ONE FOR USE OF TRADEMARK, ARE UNDER CONSIDERATION BY SEVERAL TECHNICAL MINISTERS E.G. AGRICULTURE, SCIENCE AND TECHNOLOGY, HEALTH AND SOCIAL AFFAIRS. HIS PROGNOSIS IS THAT TECHNICAL LICENSING APPLICATION WOULD BE APPROVED BUT THAT PROBLEM EXISTS WITH APPLICATION FOR TRADEMARK USE. BEST HE COULD OFFER AS SOLUTION IS THAT EVEN THOUGH LATTER NOT APPROVED BY TECHNICAL MINISTRIES, EPB MAY APPROVE ON CONDITION TRADEMARK ONLY CAN BE USED FOR EXPORT PRODUCTION. IN SUCH CASE, IF WE UNDERSTAND REGULATIONS CORRECTLY, SUNKIST COULD NOT BE USED ON LABEL FOR DOMESTIC SALES. EPB SOURCE FURTHER OBSERVED THAT ROKG WONDERS WHETHER IT IS REALLY NECESSARY OR EVEN DESIRABLE TO PLACE SUNKIST LABEL ON DOMESTIC PRODUCT. SEE PARA 3 BELOW.

2. QUESTION OF NON-EXCLUSIVE LICENSING OF TRADEMARKS AND WHAT CONSTITUTES ABANDONMENT IS COMPLEX ONE AND GROSSMAN REFERRED TO IS FORMER ASSISTANT COMMERCIAL ATTACHE, WHO DESPITE LEGAL TRAINING COULD NOT ARRIVE AT ADEQUATE DEFINITION OF LEGAL ISSUES INVOLVED THIS CASE.

3. AS WE READ ONLY KNOWN SOURCE IN ENGLISH, QUOTE NEW LAWS OF PATENT TRADEMARK OF KOREA UNQUOTE BY BYONG HO LEE, IT IS NOW POSSIBLE UNDER CERTAIN CIRCUMSTANCES TO GRANT NON-EXCLUSIVE LICENSE OF TRADEMARK. ONE IS WHEN IT IS PART OF OVERALL TECHNOLOGICAL TRANSFER TO JOINT VENTURE PARTNER OR LICENSEE. BUT EPB APPROVAL REQUIRED BEFORE PATENT OFFICE WILL REGISTER MARK TO LOCAL USER. WHAT NOW WORRIES HAI TAI IS THAT NOT ONLY WILL EPB NOT APPROVE TRADEMARK APPLICATION BUT WILL ALSO DIRECT HAI TAI NOT TO USE SUNKIST MARK UNDER ANY CIRCUMSTANCES. HAI TAI PROJECT MANAGER REPORTS SPENDING SUBSTANTIAL SUMS FOR BOTTLES AND LABELS.

4. FASTO MESSAGE ASKED WHAT OTHER US COMPANIES ARE DOING. COCA COLA HAS ISSUED FRANCHISE TO SEVERAL LOCAL BOTTLERS FOR SALES IN KOREA WITHOUT LICENSING THEIR TRADEMARK TO THESE LIMITED OFFICIAL USE  
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LOCAL BOTTLERS. COCA COLA HAS NOT APPLIED TO EPB FOR APPROVAL OF ROYALTY PAYMENTS AND EVIDENTLY TAKES ROYALTY PAYMENTS IN PRICE OF CONCENTRATE. COCA COLA HAS REGISTERED TRADEMARK IN KOREA IN NAME OF COCA COLA USA. LEGAL EXPERTS AGREE THEY THEREBY RUNNING RISK THAT SOME LOCAL FIRM WILL SUCCESSFULLY PETITION FOR CANCELLATION OF COCA COLA TRADEMARK BASED ON ABANDONMENT, E.G., ALLOWING LOCAL USE WITHOUT DUE REGISTRATION BY LOCAL USER.

5. EMBASSY CARRYING OUT FURTHER CONSULTATIONS WITH LEGAL EXPERTS AND WILL ATTEMPT ADDITIONAL REPORT IN GENERAL TERMS, WITH COPY TO FAS. EB/CBA/BP COMMENT REQUESTED.

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